

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

ANONYMOUS,	)	
	)	
Plaintiff,	)	8:04CV269
	)	
v.	)	
	)	MEMORANDUM AND ORDER
GORDON KEENE VELLA,	)	TO SHOW CAUSE
	)	
Defendant.	)	
	)	

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The matter is filed by the court sua sponte pursuant to Rules 37(b) of the Federal Rules of Civil Procedure and the court's inherent power to enforce compliance with its orders and preserve and enforce the rights of litigants. Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991). Based on the undersigned's personal knowledge of the pretrial processes for this case and the court's record of docketed filings, the undersigned magistrate judge certifies the following facts to the Honorable Richard G. Kopf, the United States District Judge assigned to this civil case:

1. On January 23, 2007, the plaintiff moved for an order compelling the defendant, Gordon Keene Vella, to respond to three interrogatories and a document production request served on the defendant on September 19, 2006. See filings 250, 251.
2. On February 21, 2007, the plaintiff's motion to compel was granted and the defendant was ordered to answer and respond to the plaintiff's discovery within ten days. Filing 265. The defendant is represented by Craig C. Cunningham, who was admitted to this court pro hac vice. The February 21, 2007 order was served on Mr. Cunningham as counsel for the defendant by the court's electronic filing system. The order was not appealed.
3. On March 7, 2007, the plaintiff filed a motion for sanctions, and on March 14, 2007, she filed an amended motion for sanctions. Both motions state that the

defendant had not yet served discovery responses in accordance with the court's February 21, 2007 order.

4. At the time of the pretrial conference held on March 29, 2007, Mr. Cunningham stated that he intended to respond to the plaintiff's motions for sanctions. See also filing 280, p.3, ¶ 6. No response was filed.
5. Under this court's local rules, a certificate of service must be filed with the court when interrogatory and request for production responses are served. See NECivR 33.1(e) & 34.1(b). The defendant has not filed a certificate of service stating he has served discovery responses as required under the court's February 21, 2007 order.
6. Trial of this case is scheduled to commence on April 24, 2007.
7. The defendant has provided no explanation to the court for failing or refusing to comply with the court's February 21, 2007 order.
8. As a result of defendant's failure to comply with the court's February 21, 2007 order, the plaintiff faces going forward to trial without the benefit of information which may be relevant to determining her rights and remedies at trial.

Pursuant to Rule 37(b) of the Federal Rules of Civil Procedure and the court's inherent powers, this court is authorized to initiate contempt proceedings, enter sanctions, and impose punishment to compel compliance with its orders, vindicate its dignity, and preserve and enforce the rights of the parties appearing before it. Under the facts of this case, drastic sanctions may be warranted, including but not limited to:

- entering an order directing liability against the defendant;
- presenting an adverse jury instruction to the jury on the issue of damages; and/or

- incarcerating the defendant until he complies with the February 21, 2007 order, filing 265.

In addition, the court will require the defendant or his counsel to pay the reasonable expenses, including attorney's fees, caused by defendant's failure to comply with this court's order unless the court finds that the failure was substantially justified or that an award of expenses would be unjust.

IT THEREFORE HEREBY IS ORDERED:

- a. The defendant is ordered to show cause why he should not be held in contempt and/or sanctioned for failing to comply with the court's February 21, 2007 order, filing 265.
- b. A show cause hearing is set to commence before the Honorable Richard G. Kopf in Courtroom 1, Robert V. Denney Courthouse, 100 Centennial Mall North, Lincoln, Nebraska on April 20, 2007 beginning at 11:00 a.m. Both the defendant and his counsel shall personally attend this hearing.
- c. Counsel for the defendant, Craig C. Cunningham, is hereby ordered to promptly deliver a copy of this memorandum and order to the defendant.

DATED this 12<sup>th</sup> day of April, 2007.

BY THE COURT:

s/ *David L. Piester*

David L. Piester  
United States Magistrate Judge